



Office of the Attorney General
State of Texas

June 29, 1993

DAN MORALES
ATTORNEY GENERAL

Ms. Gretchen Kuehn Bohnert
Ms. Helen M. Gros
Assistant City Attorneys
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR93-343

Dear Ms Bohnert and Ms. Gros:

You both ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your requests were assigned ID# 19664.

The City of Houston received two different requests for the same information regarding residency requirements in connection with an upcoming city election. Specifically, the first request is for "a copy of all recent opinions on the residency requirements relative to the upcoming city elections." The second request is for "a copy of your opinion letter dated March 5, 1993 regarding residency period requirements in connection with City district elections." You both contend that section 3(a)(7) and 3(a)(11) of the Open Records Act except the information from disclosure.

Section 3(a)(7) protects

matters in which the duty of the Attorney General of Texas or an attorney of a political subdivision, to his client, pursuant to the Rules and Canons of Ethics of the State Bar of Texas are prohibited from disclosure, or which by order of a court are prohibited from disclosure.

A previous determination of this Office, Open Records Decision No. 574 (1990), a copy of which is enclosed, determined that section 3(a)(7) protects only information that reveals client confidences or the attorney's legal opinion or advice. We agree that the letter dated March 5, 1993 contains the city attorney's legal advice and opinion. You may both therefore withhold that letter, which we have marked accordingly.

The first request is for "all" opinions concerning the residency requirements. Ms. Bohnert has submitted for our review four letters responsive to the request. We conclude

that section 3(a)(7) also excepts from disclosure the letter dated March 9, 1993. However, section 3(a)(7) does not prevent disclosure of the remainder of the letters as they do not contain the city attorney's legal advice or opinion or convey client confidences.

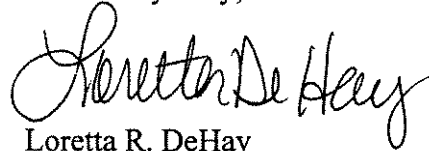
You also claim that the information constitutes "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency" under section 3(a)(11) of the act and, therefore, is excepted from public disclosure. Since we have determined that only two of the letters are excepted by section 3(a)(7), we must determine whether section 3(a)(11) would apply to the other two letters Ms. Bohnert submitted for our review.

For several months now, the effect of the section 3(a)(11) exception has been the focus of litigation. In *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), the Third Court of Appeals recently held that §3(a)(11) "exempts those documents, and only those documents, normally privileged in the civil discovery context." *Gilbreath* at 413. The court has since denied a motion for rehearing this case.

We are currently reviewing the status of the section 3(a)(11) exception in light of the *Gilbreath* decision. You have not explained nor is it apparent on its face how the letter from the Secretary of State to Mr. Steve Bickerstaff constitutes "inter-agency or intra-agency" memoranda. A governmental body has the burden of proving how and why a specific exception applies. Open Records Decision No. 542 (1990). Therefore, we conclude that section 3(a)(11) does not except from disclosure the letter from the Secretary of State; you must therefore release the letter in its entirety. As for the letter dated March 10, 1993, we are returning your request to you and asking that you once again review the information and your initial decision to seek closure of this information. We remind you that it is within the discretion of governmental bodies to release information that may be covered by section 3(a)(11). If, as a result of your review, you still desire to seek closure of the information, you must re-submit your request and the documents at issue, along with your arguments for withholding the information pursuant to section 3(a)(11) or any other exception that you have previously raised. You must submit these materials within 15 days of the date of this letter. This office will then review your request in accordance with the *Gilbreath* decision. If you do not timely resubmit the request, we will presume that you have released this information.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Opinion Committee

LRD/lmm/jmn

Ref.: ID# 19664

Enclosures: marked documents

cc: Ms. Claudia Kemendo
5010 Woodway #113
Houston, Texas 77056-1713
(w/o enclosures)